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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

To: The Commission

COMMENTS OF THE NATIONAL WIRELESS RESELLERS ASSOCIATION

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SUMMARY

As a result of the enactment of the Telecommunications Act of 1996 (the "1996 Act") and significant technological advances, the telecommunications marketplace is undergoing profound change. This change is characterized by 1) rapidly blurring distinctions between wired and wireless technologies, and fixed and mobile services, and 2) the evolution from single service providers to providers offering one-stop-shopping for all types of services such as local and long-distance voice and data services, cellular, paging, E-mail and Internet access services. In such an environment, the National Wireless Resellers Association ("NWRA") submits that it would be futile for the Commission to fashion resale and interconnection policies predicated on the fixed or mobile nature of the service offered or on the wired or wireless technology used in offering the service. Rather, these policies must be forward-looking, broad-based and open, reflecting the reality of converging telecommunications markets and services.

Until the enactment of the 1996 Act, the Commission had neither the need nor the opportunity to address resale and interconnection across technologies and services in a comprehensive manner. The adoption of section 251 of the 1996 Act, however, provides the Commission with precisely that opportunity. The continuing convergence of wireless and wireline services, coupled with the long-standing precedent that cellular service constitutes local exchange service, leads to the conclusion that all facilities-based CMRS providers should be treated as LECs pursuant to section 251(b). Accordingly, facilities-based CMRS providers, along with LECs, uniformly should be subject to the duties set forth in section 251(b) regarding

resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation requirements.

Congress also chose in section 251(a) to reiterate forcefully that all telecommunications carriers have the duty to interconnect with the facilities and equipment of other telecommunications carriers, thereby supporting NWRA's long-standing position that requiring facilities-based CMRS providers to interconnect with the facilities of a reseller is a pro-competitive policy and consistent with sections 201, 332(c) of the Communications Act of 1934 (the "1934 Act") and now section 251(a) of the 1996 Act.

An important benefit to be derived from the adoption of a broad-based resale and interconnection policy under sections 251(a) and 251(b) is the access to wireless services and facilities which small businesses can then incorporate into new and innovative services of their own. Such policies would thereby help fulfill the Commission's Congressionally-mandated obligation to ensure that small businesses participate in the provision of spectrum-based services.

Finally, NWRA disagrees with the Commission's general conclusion that facilities-based CMRS providers in all cases do not meet the definition of incumbent LEC under section 251(c). As incumbent LECs bundle CMRS services with the other services they offer as incumbent LECs, and as their CMRS services are no longer required to be offered by structurally separate subsidiaries, their CMRS services become direct substitutes for, and indistinguishable from, their other service offerings. Under these conditions, there would be no reason to

distinguish from a regulatory standpoint between CMRS and wired services for purposes of applying the requirements of section 251(c).

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The National Wireless Resellers Association ("NWRA"), by its attorneys, respectfully submits its Comments in response to the Notice of Proposed Rulemaking ("Notice") released April 19, 1996 in the above-captioned proceeding. While the Notice seeks comment on a wide range of issues related to the local competition provisions of the Telecommunications Act of 1996, (the "1996 Act"), NWRA focuses its comments on those issues affecting the provision of Commercial Mobile Radio Services ("CMRS").[1] As set forth below, NWRA believes that wireless services will come to represent a significant component of the redefined local telecommunications infrastructure and will be a driving force for promoting local competition, accelerating the technological change and innovation envisioned by Congress, and creating

[1] In particular, NWRA comments on the issues raised in Sections II.B.2.e. (Obligations Imposed by Section 251(c) on "Incumbent LECs"), II.C. (Obligations Imposed on "Local Exchange Carriers" by Section 251(b)) and II.D. (Duties Imposed on "Telecommunications Carriers" by Section 251(a)).

viable opportunities for small business participation -- provided that the Commission's rules and policies promote the creation of a vibrant wireless resale marketplace.

I. BACKGROUND

The 1996 Act reflects Congress' desire to replace legal and regulatory barriers to entry with increased competition between heretofore separate segments of the telecommunications marketplace, with an ultimate goal of enabling consumers to reap the traditional benefits of competition -- increased choices of new and innovative services offered at lower prices.[2] Since the time of enactment of the 1996 Act, several examples of the decompartmentalization of the telecommunications industry envisioned by Congress have already been announced.[3] It remains to be seen, of course, whether these new alliances ultimately result in the consumer benefits envisioned by Congress. Regardless of the outcome, however, the trend appears clear: telecommunications providers under the "new regulatory paradigm"[4] will market multiple services, such as local and long distance voice, data and video, all under one brand to provide "one-stop-shopping" for customers.[5]

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[2] See Statement of Rep. Fields, Notice, n. 5.

[3] SBC Communications, Inc. and Pacific Telesis Group merger announced April 1, 1996; Bell Atlantic Corp. and NYNEX Corp. merger announced April 22, 1996; MFS Communications Company, Inc. and UUNET Technologies, Inc. merger announced April 30, 1996.

[4] Notice, ¶2, citing 141 Cong. Rec. S7881-2, S7886 (June 7, 1995)(statement of Sen. Pressler).

[5] Consolidation and alliance in telecommunications reflect the turn away from rate-of-return regulation to commodity level pricing. MCI Communications Corp. was the first

Just as it will become more difficult to distinguish between telecommunications providers based on the types of services they offer, so, too, will it become increasingly difficult to distinguish between services based on the technologies by which they are delivered. Perhaps nowhere is this more evident than with respect to the rapidly blurring distinction between services offered by wired and wireless technologies. With technological advances permitting vast increases in the capabilities and capacities of wireless systems, virtually any communications transmission can now be carried over both wired and wireless technologies. For example, long distance voice and data transmission service can be provided by wire, point-to-point microwave radio facilities or satellites. Local access to voice, on-line and other data services is provided by wireline and wireless services such as cellular, PCS and microwave radio. Video transmission services are offered by cable systems and by wireless cable and direct broadcast satellite providers. Even audio speakers, computer peripheral equipment and automated teller machines can be wired or wireless.

Intimately related to this erosion of the traditional barriers separating wired from wireless and single-service providers from those offering one-stop-shopping, is the melding of fixed and mobile services. Technological developments offer consumers increasing amounts of freedom and mobility such that fixed services have become portable, and mobile services have become fixed. Wireless PBXs and LANs for instance now afford workers formerly tethered to

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telecommunications company to introduce bundled services under the brand "MCI One" on April 29, 1996. MCI's service offers combinations of cellular service, paging, calling card, long distance, e-mail and Internet access. AT&T Corp. is expected to introduce a similar package, code named "AT&T Render and Collect," in the near future.

telephones in their offices new-found mobility and portability, without compromising advanced features. Conversely, mobile-only services are becoming cost-effective alternatives to fixed applications such as cellular payphones and vending machine monitors. Indeed, the Commission has recognized the important benefits associated with these developments and has taken appropriate steps to promote flexible service offerings such as these wherever possible.[6]

The challenge for the Commission in this rapidly changing technological environment is to ensure that its rules and policies remain technology-neutral, meaning that it must strive to maintain a level regulatory playing field for similarly situated service providers regardless of the technologies by which their services are delivered. These concepts of technological neutrality and regulatory parity are hardly new to the Commission. On numerous

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[6] See, e.g., Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, Notice of Proposed Rulemaking, WT Docket No. 96-6, FCC 96-17, 11 FCC Rcd. 2445 (1996); Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, Report and Order, 10 FCC Rcd. 9589 (1995)(MDS stations permitted to render any type of communications service on a common carrier or non-common carrier basis); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, 60 Fed. Reg. 46,564 (Sept. 7, 1995)(proposal to allow fixed operations on a primary basis with land mobile operations in the band); Amendment of Subpart K, Part 22 of the Commission's Rules, to Facilitate the Development of Cellular Radio Telecommunications Service in the Rural Parts of the Country, RM-4882, Memorandum Opinion and Order, 102 FCC 2d 470 (1985).

occasions, the Commission has indicated its desire to let consumer demand and the marketplace, not regulatory decree, determine the technology winners and losers.[7]

The Commission has also endeavored to establish regulatory symmetry among similar services. In implementing Sections 3(n) and 332 of the 1934 Act, as amended by Congress' adoption of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993,[8] the Commission created a new regulatory framework designed to enhance competition by establishing regulatory parity among similar mobile services.[9] Most recently, Congress' enactment of the 1996 Act has challenged the Commission to "debalkanize" and "decompartmentalize" the various segments of the telecommunications industry by opening

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[7] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd. 7988, 8002 (1994) ("[T]he Commission's role is to establish an appropriate level of regulation for the administration of CMRS. Such a regulatory regime will ensure that the marketplace -- and the regulatory arena -- shapes the development and delivery of mobile services to meet the demands and needs of consumers ...."); see also In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, Report and Order, 10 FCC Rcd. 10076, 10081, 10095 (1995)(the Commission adopted a channel plan that was characterized as "technology-neutral" so that users could adopt the most spectrally-efficient technology available and that would permit manufacturers to compete in an open marketplace); In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54-63.58, CC Docket No. 87-266, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd. 244, 260 (1995) (the Commission expressed its desire to remain technology neutral with respect to video dialtone deployment).

[8] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI §6002(b), 107 Stat. 312. 392 (1993).

[9] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd. 7988 (1994).

heretofore monopoly telecommunications markets to competition and by promoting new rivalries in already competitive markets [10]

II. COMMENTS

The ongoing evolution towards this new, convergent telecommunications marketplace characterized by rapidly blurring distinctions between wired and wireless, fixed and mobile, and the evolution from single services to bundled service offerings, sets the stage for the Commission to confirm its commitment to unfettered resale and interconnection as the primary means of ensuring that the pro-competitive potential of the 1996 Act is fully realized.[11] In particular, NWRA submits that sections 251 (a) and (b), governing the duties of telecommunications carriers and local exchange carriers ("LECs"), respectively, provide the Commission with the appropriate vehicle for adopting a general resale and interconnection policy that operates regardless of the nature of the technology (wired or wireless) or the service (fixed or mobile). As set forth below, the adoption by the Commission of such a policy not only will foster greater competition among all providers of telecommunications services, including CMRS

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[10] Notice, ¶ 2.

[11] Well-established precedent supports the benefits to competition supplied by unrestricted resale and interconnection policies. See, e.g., Resale and Shared Use, 60 F.C.C. 2d 261, 265 (1975), recon. granted in part, 62 F.C.C. 2d 588 (1977), aff'd sub nom., AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), cert. denied, 439 U.S. 875 (1978); Cellular Communications Systems, 86 F.C.C. 2d 469 (1981); Petitions for Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies, 7 FCC Rcd. 4006, 4008 (1992); Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 10 FCC Rcd. 10665, 10708 (1995).

providers, but also will provide a platform which encourages the participation of small businesses in all aspects of the burgeoning telecommunications marketplace.

A. All CMRS Providers are Local Exchange Carriers Subject to the Requirements of Section 251(b).

The continuing convergence of wireless and wireline services described above, coupled with the longstanding precedent that cellular service, as the dominant CMRS service to date, constitutes local exchange service, lead inexorably to the conclusion that CMRS providers should be treated as LECs pursuant to section 251(b). This conclusion is also supported by a legal analysis of the new definitions adopted by Congress related to section 251(b). Thus, from both policy and legal perspectives, the Commission should find that all CMRS providers are subject to the resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation requirements set forth in sections 251(b)(1) through 251(b)(5), respectively.[12]

[12] It is important to note that the duties of LECs delineated in section 251(b) are not predicated on the existence or non-existence of some requisite level of competition in the local exchange marketplace. Congress imposed these minimum duties in order to continuously promote a pro-competitive environment, with no suggestion that the requirements should be curtailed or removed when the number of competitors in a local marketplace exceeds a certain threshold. In adopting these ongoing duties, Congress recognized that the level of competition is not a static condition, and that the surest way to reduce competition is to eliminate the very conditions which created competition in the first place.

1. Long-Standing Policy Supports the Conclusion That CMRS is the Equivalent of Local Exchange Service.

As a policy matter, the Commission has long held that cellular service is the equivalent of local exchange service.[13] Similarly, since its inception, PCS has been envisioned as the equivalent of, and a potential competitor to, local exchange service.[14] Moreover, both potential and existing PCS providers have long touted PCS as creating direct competition to cellular service,[15] and have targeted traditional local exchange services, such as wireless local loop services, for exploitation.

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[13] See, e.g., Cellular Communications Systems, 89 F.C.C. 2d 58, 72 (1982)("[W]e consider cellular to be an extension of local exchange service"); MTS and WATS Market Structure, 97 F.C.C. 2d 834, 882 (1984)("RCCs provide 'exchange service' under sections 2(b) and 221(b) of the Communications Act, and we have consistently treated the mobile radio services provided by RCCs and telephone companies as local in nature," citations omitted); Cellular Lottery Rulemaking, 98 F.C.C. 2d 175, 194 (1984)("Cellular service is a local exchange radio service under sections 2(b) and 221(b) of the [Act], which is a natural extension of local exchange landline service . . . Cellular service may, over time, supplant landline local exchange service in some areas").

[14] See, e.g., Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, Notice of Proposed Rulemaking, WT Docket No. 96-6, FCC 96-17, 11 FCC Rcd. 2445 (1996)("By the instant Notice, the Commission takes additional steps to foster competitive local exchange service by proposing that broadband CMRS providers also be able to offer the equivalent of local exchange service using existing allocations for PCS, cellular and SMR"); Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, GEN Docket No. 90-314, FCC 93-451, 8 FCC Rcd. 7700, 7747 (1993)("LECs may naturally desire to develop their networks using wireless tails or wireless loops wherever they are more economical than wireline connections"); id. at 7751 ("[W]e also find that allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks.").

[15] See, e.g., Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, Notice of Proposed Rulemaking, WT Docket No. 96-6, FCC 96-17, 11 FCC Rcd. 2445 (1996).

NWRA notes that despite this precedent, at least some members of the PCS industry now appear to be distancing themselves from the notion that PCS is a local service.[16] Such a position not only runs contrary to established Commission precedent characterizing cellular service as local exchange service, but also points out the need for adoption of resale and interconnection policies which apply to all LEC services regardless of the technology used to deliver such services. Absent such policies, the Commission will find itself drawing distinctions for regulatory purposes where no material distinctions exist. Such a futile endeavor would amount to both a waste of scarce Commission resources and, more importantly, an unnecessary hindrance to the deployment of new and innovative services.[17]

The Commission has asked whether it would be sound policy to distinguish between telecommunications carriers on the basis of the technology they use.[18] It should be clear from the foregoing discussion that NWRA strongly believes that distinguishing for regulatory purposes between telecommunications carriers on the basis of the technology they use runs

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[16] See ex parte submission of the Personal Communications Industry Association, CC Docket No. 96-6 (May 8, 1996) at p. 9 ("CMRS is inherently interstate and at the very least has both interstate and interstate aspects").

[17] The ability of resellers to negotiate agreements with facilities-based carriers enabling both the interconnection of reseller switches to the facilities of such carriers and the provision of new, innovative, and cost-effective services that would result from such interconnection has been impaired by the absence of a general interconnection requirement. While this issue presumably will be addressed in the context of CC Docket 94-54 and two pending formal complaints on the subject, NWRA urges the Commission to take the opportunity afforded by the instant proceeding to adopt a general CMRS resale and interconnection requirement as part of its implementation of section 251.

[18] Id.

counter to established Commission precedent regarding technological neutrality and counter to the reality of the converging marketplace. Moreover, technology-based distinctions impose inequitable regulatory burdens that distort competition. In short, different treatment of telecommunications carriers offering the same or comparable services based on the technology used to deliver those services is both bad policy and contrary to long-standing precedent.

2. The Definitions Adopted By Congress Support The Conclusion That Facilities-Based CMRS Carriers Should Be Treated As LECs.

The 1996 Act defines "LEC" as "any person that is engaged in the provision of telephone exchange service or exchange access."[19] As the Commission correctly states in the Notice, "'telephone exchange service' is arguably broad enough to encompass at least some CMRS."[20]

NWRA submits that the new, broadened definition of "Telephone Exchange Service" adopted by Congress in the 1996 Act is in fact broad enough to include all CMRS, such that all CMRS providers are appropriately characterized as LECs for purposes of section 251(b). Specifically, the 1996 Act added to the end of the traditional, existing definition of "telephone exchange service" the phrase "or comparable service provided through a system of switches, transmission equipment or other facilities (or combination thereof) by which a subscriber can

[19] Section 3(44).

[20] Notice, ¶168.

originate and terminate a telecommunications service."[21] This phrase greatly expands the definition of what qualifies as local exchange service and, when read in conjunction with Congress' new definition of "local exchange carrier," provides ample authority for the Commission to find that all facilities-based CMRS providers fall within the definition of LEC.

New section 3(44) of the 1996 Act includes as part of the definition of LEC, the qualification that:

> [s]uch term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.[22]

Congress thus specifically left open the opportunity for the Commission to conclude that all CMRS should be included in the definition of LEC. The Commission, therefore, should seize this opportunity and find for all of the foregoing reasons that facilities-based CMRS providers are LECs and as such are subject to the duties of LECs set forth in section 251(b).[23]

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[21] See Notice, n. 228. The prior definition of "Telephone Exchange Service" was: service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area, operated to furnish subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge. 47 U.S.C. §3(47).

[22] Section 3(44)(emphasis added).

[23] It bears noting that the resale, number portability, dialing parity and reciprocal compensation duties contained in section 251(b) are precisely the same issues under examination by the Commission in CC Docket No. 94-54 as they relate to CMRS. The fact that the Commission finds itself addressing the same issues in overlapping proceedings itself suggests that these issues should be resolved in the context of a single, coherent policy.

B. As "Telecommunications Carriers" Under the 1996 Act, CMRS Providers Also Are Subject to the General Interconnection Obligation Contained in Section 251(a).

NWRA has presented its strong belief on numerous occasions before the Commission that the promotion of a general interconnection obligation in accordance with the requirements of sections 201 and 332(c) of the 1934 Act would provide the impetus needed to enable wireless resellers to install their own switching equipment, thereby fostering the development of a competitive marketplace.[24] NWRA finds it significant, therefore, that in implementing the new regulatory paradigm governing the development of competitive markets, Congress chose to forcefully reiterate the general interconnection obligations of all providers of telecommunications services. Specifically, section 251(a) states that: "[e]ach telecommunications carrier has the duty -- (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers"[25] Under the 1996 Act, all CMRS providers, including both facilities-based carriers and wireless resellers, meet the definition of "telecommunications carrier." because they are providers of telecommunications services.[26]

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[24] See, e.g., NWRA Comments, Reply Comments, and Petition for Reconsideration in Gen. Dkt. No. 93-252, Implementation of Sections 3(n) and 332 of the Communications Act, 8 FCC Rcd. 7988 (1993) (Notice of Proposed Rulemaking); 9 FCC Rcd. 1411 (1994) (Second Report and Order); NWRA Comments and Reply Comments in CC Dkt. No. 94-54, In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, 10 FCC Rcd. 5408 (1994) (Notice of Proposed Rulemaking and Notice of Inquiry); 10 FCC Rcd. 10666 (1995) (Second Notice of Proposed Rulemaking).

[25] Section 251(a)(emphasis added).

[26] As the Commission correctly concludes in the Notice, CMRS services fall within the definition of telecommunications services because they are offered for a fee directly to the

Congress' clear and unambiguous statement that each telecommunications carrier has the duty under the new regulatory regime to interconnect with the facilities and equipment of other telecommunications carriers, thus supports NWRA's position that sections 201 and 332(c) of the 1934 Act, and now section 251(a), all require facilities-based CMRS carriers to interconnect with a wireless reseller's switch.[27] Perhaps more significantly, in adopting Section 251(a), Congress provided the Commission with a perfect opportunity to address the interconnection issue in the broadest possible manner, and to adopt a uniform, open interconnection policy applicable to all types of services and service providers.[28]

C. The Adoption of a General Resale and Interconnection Policy Applicable to CMRS Providers Promotes Small Business Participation in the Telecommunications Marketplace.

A key benefit of a general policy promoting CMRS resale and interconnection is the positive impact it will have on the deployment of new technologies and services such as PCS, particularly by small businesses. Given the high capital costs associated with deploying telecommunications infrastructure, resale historically has been the first entry point for small

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public. Notice, ¶168.

[27] NWRA's arguments in this regard can be found in its filings in CC Dockets 93-252 and 94-54. Congress was careful to indicate that the interconnection obligations contained in section 251 are in addition to those contained section 201, and do not alter or supercede them in any way. See section 251(i); H.R. Rep. No. 104-258, 104th Cong., 2d Sess., 123 (1996).

[28] As noted above with respect to section 251(b), the interconnection duty contained in section 251(a) is essentially the same issue under examination by the Commission in CC Docket No. 95-185. Again, the fact that the Commission finds itself addressing the same issues in overlapping proceedings begs for resolution of those issues as part of a single, coherent policy.

businesses in the communications markets. One of the most notable corporate success stories of the 20th century is that of MCI, which began as a small communications company and found its first significant opportunity as a reseller. In the wireless industry, costs associated with entering the market are particularly high, not the least of which is the cost of obtaining a license at auction.

Congress explicitly identified this as a concern when it enacted the Omnibus Budget Reconciliation Act of 1993, indicating that special care was required in implementing auctions to preserve continuing opportunities in the wireless markets for small businesses and businesses owned by members of minority groups and women.[29] Although the Commission responded appropriately to Congress' direction by providing opportunities for "designated entities" to participate directly in the auctions, widespread participation by small businesses has been significantly frustrated by judicial challenges to some of these provisions arising from the Adarand decision and by the auction results themselves.[30]

NWRA submits that application of the resale and interconnection duties contained in sections 251(a) and 251(b) to facilities-based CMRS carriers will provide small businesses, including those businesses owned by minority groups and women, the opportunity that Congress

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[29] See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI §6002(b), 107 Stat. 312, 392 (1993).

[30] Adarand Constructors, Inc. v. Peña, 115 S. Ct. 2097 (1995). While the Commission may cite the PCS C block auction as a success in terms of small business participation, that assessment is based on the size of small business as was defined for purposes of the auction. The auction cannot be viewed to have been nearly as successful for companies of the size normally thought of as being small businesses.

mandated but that has thus far been illusory. Broad-based resale and interconnection policies would thereby help fulfill the Commission's Congressionally-mandated obligation to promote the interests of small businesses. Moreover, these policies will provide small businesses with access to services and facilities which they can then incorporate into new and innovative services of their own, thereby accelerating the technological change and innovation also envisioned by Congress and providing their own contribution to the creation of a more competitive telecommunications marketplace.

D. Facilities-Based CMRS Providers Under Certain Circumstances Fall Within the Definition of Incumbent LEC.

NWRA disagrees with the Commission's general conclusion that facilities-based CMRS providers in all cases do not meet the definition of incumbent LEC. Specifically, NWRA submits that as incumbent LECs bundle CMRS services with the other services they offer as incumbent LECs, and as their CMRS services are no longer required to be offered by structurally separate subsidiaries, their CMRS services become direct substitutes for, and indistinguishable from, their other service offerings. Under these conditions, where wired and wireless and fixed and mobile are indistinguishable in terms of their functionality, there would be no reason to distinguish from a regulatory standpoint between CMRS and wired services for purposes of applying the requirements of section 251(c). Accordingly, the Commission should acknowledge that under circumstances such as these, the CMRS operations of incumbent LECs would be treated no differently than their other operations -- access to their CMRS facilities would be

provided on an unbundled basis in the same manner as they provide access to their other network facilities, in accordance with section 251(c).

III. CONCLUSION

For the foregoing reasons, NWRA submits that Congress has afforded the Commission a perfect opportunity to adopt a broad-based, open resale and interconnection policy that is not predicated on the fixed or mobile nature of the service offered or on the wired or wireless technology used in offering the service. Instead, the policy would recognize that CMRS services fall within the category of local exchange services and conclude that all facilities-based CMRS providers should be treated as LECs and be subject to uniform duties regarding resale, interconnection, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. These simple yet comprehensive duties established by Congress, if applied to CMRS providers, will foster greater competition among all providers of telecommunications

services and the creation of viable opportunities for small business to participate in the redefined telecommunications marketplace.

Respectfully submitted,

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